JOHORE REPORTS.

[CRIMINAL JURISDICTION]

LAVILLE, J.

August 6, 1940.

THE PUBLIC PROSECUTOR, JOHORE

vs.

FONG AH TONG AND CHEONG CHI SHEN.

[JOHORE BAHRU CRIMINAL CASE No. 22 of 1940]

Criminal trial with aid of Assessors—Submission of no case to meet—F.M.S. Criminal Procedure Code: Sections 190 and 214 distinguished.

Where, in a trial by a Judge with the aid of Assessors under Chapter XXI of the F.M.S Criminal Procedure Code, a submission is made at the close of the case for the prosecution that the evidence does not establish a **prima facie** case against the accused, the presiding Judge must himself decide whether the evidence, if unrebutted, would warrant a conviction, and must not call upon the accused to enter on his defence unless the prosecution has at that stage of the proceedings proved its case beyond all reasonable doubt. **Aliter** in a trial by Jury, where the accused may be called upon to enter on his defence if there is any evidence that he committed the offence charged.

TRIAL BEFORE JUDGE WITH ASSESSORS.

The accused were charged with the offence of Murder and were tried before the Judge sitting with two Assessors under Chapter XXI of the Criminal Procedure Code. At the conclusion of the case for the prosecution counsel for the accused made a submission that there was no case for either accused to answer. The following Ruling was given by the Judge. The facts of the case are immaterial.

Ismail, D.P.P. for Prosecution.

Demuth for both accused.

Laville, J. A submission has been made to me by counsel for the defence that the Court should under Section 190 of the Criminal Procedure Code hold that no case has been made out against the accused, which, if unrebutted, would warrant their conviction and should acquit them.

In my view in that section the word Court means the Judge sitting to try a criminal case and excludes the assessors: under Chapter XXI, Criminal Procedure Code the use of the word Court throughout makes it clear that the assessors do not form part thereof but are rather aiders and helpers of the Court on matters of fact whose opinions the Court may use to confirm it in its final judgment.

But by Section 190 it would appear that there is an onus cast on the presiding judge at a trial with the aid of assessors to decide at the end of the prosecution evidence, not as in jury cases whether there is any evidence at all of the guilt of the accused, to go to the jury, but a greater onus namely whether the prosecution evidence, if no evidence is given at all by accused would justify a conviction. Warrant in my view is a strong word and excludes any doubts by the Court.

The evidence which would warrant a conviction, if unrebutted, is evidence that satisfies the Court beyond all reasonable doubt that the accused is guilty of the offence charged or some lesser offence. The criterion therefore on which the Court must work is, if there is no more evidence has the prosecution proved its case beyond all reasonable doubt.

Accused Acquitted.